

Before the
Administrative Hearing Commission
State of Missouri



STEVEN CURTIS PRESSON,)	
)	
Petitioner,)	
)	
vs.)	No. 13-1231 DI
)	
DIRECTOR, DEPARTMENT OF)	
INSURANCE, FINANCIAL INSTITUTIONS)	
AND PROFESSIONAL REGISTRATION,)	
)	
Respondent.)	

ORDER GRANTING PARTIAL SUMMARY DECISION

We find that the Director of the Department of Insurance, Financial Institutions and Professional Registration (“the Director” and “the Department,” respectively) has cause to deny a motor vehicle extended service contract producer license to Steven Presson because he has been convicted of five felonies and has been refused a license by a state regulator of service contracts.

Procedure

Presson filed a complaint with this Commission on July 1, 2013. The Director filed an answer to the complaint on August 9, 2013, and a motion for summary decision on September 27, 2013. We gave Presson until October 16, 2013, to respond, but he did not respond by that date. On October 23, 2013, a week after our response deadline, Presson sent the Director, rather than this Commission, a document titled “Petitioner Request to Nullify and Void the Motion for

Summary Decision” and containing no admissible evidence. As a courtesy, on October 28, 2013, the Director forwarded that document to this Commission, accompanied by a motion for leave to file a reply in support of his motion and his proposed reply. We granted the motion for leave to file on October 29, 2013, and deemed the reply filed as of October 28, 2013. On our own motion, we allow Presson to file his response to the Director’s motion out of time.

Regulation 1 CSR 15-3.446(6) provides that we may decide this case without a hearing if the Director establishes facts that Presson does not dispute and entitle the Director to a favorable decision. The parties may establish facts through admissible evidence.¹

By failing to respond to the Director's motion, Presson has failed to dispute the evidence the Director submitted in support of his motion for summary decision. That evidence includes certified copies of court records and the Director’s authenticated records. Therefore, we make our findings of fact from the undisputed evidence submitted by the Director in support of his motion.

Findings of Fact

Presson’s Criminal History

1. On October 7, 2001, Presson pled guilty to the Class D felony of driving while intoxicated (“DWT”)² in the Circuit Court of St. Charles County. Presson was sentenced to five years in the Missouri Department of Corrections.

2. On March 16, 2004, Presson pled guilty to the Class D felony of DWI (persistent offender)³ in the Circuit Court of St. Louis County. Presson was sentenced to three years in the Missouri Department of Corrections.

¹ 1 CSR 15-3.446(6)(B). All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

² Sections 577.010 and 577.023.3 (Supp. 2002). Statutory references are to RSMo 2000 unless otherwise indicated.

³ *Id.*

3. On October 12, 2004, Presson pled guilty to one misdemeanor count of passing a bad check⁴ in the Circuit Court of Randolph County. Presson was fined \$25.00.

4. On November 7, 2005, Presson pled guilty to a Class D felony count of passing bad checks⁵ in the Circuit Court of St. Charles County. The trial court sentenced Presson to three years in the Missouri Department of Corrections, suspended the execution of sentence, and placed him on five years' probation.

5. On December 2, 2011, Presson was arraigned on one count of DWI (chronic offender),⁶ a Class B felony, in the Circuit Court of St. Charles County. The information in that case was filed on November 14, 2011.

6. On March 20, 2012, the prosecutor amended the above-referenced information to add a second count of DWI (chronic offender).

7. On January 23, 2013, Presson pled guilty to both counts of DWI (chronic offender). On March 5, 2013, Presson was sentenced to seven years' confinement for each count, the sentences to be served concurrently.

Presson's Prior Case

8. On December 19, 2011, the Director received Presson's application for a motor vehicle extended service contract producer license ("the 2011 application").

9. On September 17, 2012, the Director denied the 2011 application on grounds that Presson had failed to disclose a then-pending charge of DWI, chronic offender, a Class B felony, and because Presson had, at that time, already been convicted of three other felonies.

10. Presson filed a complaint with this Commission on October 9, 2012 to appeal the Director's decision. We opened a case and assigned case number 12-1840 DI to it.

⁴ Section 570.120.4 (Supp. 2002).

⁵ Section 570.120.4(1) (Supp. 2002).

⁶ Sections 577.010 and 577.023.5 (Supp. 2012).

11. The Director filed a motion for summary decision in that case on February 22, 2013.

12. This Commission granted the Director's motion on March 25, 2013. Our decision concluded that Presson's failure to disclose the first of his two DWI (chronic offender) charges was a material misrepresentation, and the three felonies of which he had, at that time, been convicted of, constituted cause to deny Presson a license.

Presson's 2012 Application

13. Along with the complaint filed in case number 12-1840 DI, Presson included another application ("the 2012 application") for a motor vehicle extended services contract producer license. That application was dated October 22, 2012.

14. This Commission forwarded the 2012 application to the Director, along with the check sent by Presson for the filing fee.

15. On the 2012 application, in the section "Background Information," the Director asked: "Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime?" Presson checked the "yes" box next to this question.

16. The application defined "crime" as "a misdemeanor, felony or a military offense." The application allowed applicants to "exclude misdemeanor convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses."

17. If an applicant answered "yes," he was required to submit a written statement explaining each offense, a copy of the charging document for each offense, and a copy of the official document resolving each offense.

18. Presson attached a letter to his application stating that he “had marked yes [in answer to the question whether he had been convicted of a crime] due to passing bad check on my background history.” He referred to his prior application for information on that charge, and asked to “[p]lease disregard all other DUI charges per application instructions these charges need not apply.”

19. Presson did not state on the application or in his letter that he had felony convictions for DWI.

20. The Director denied Presson’s application on May 24, 2013 because: (a) Presson tried to obtain a motor vehicle extended service contract producer license through material misrepresentation or fraud by failing to disclose his felony DWI convictions from 2001, 2004, and 2012; (b) Presson tried to obtain a motor vehicle extended service contract producer license through material misrepresentation or fraud by failing to disclose his involvement in prior administrative proceedings in the Department and this Commission; (c) Presson had been convicted of five felonies; (d) Presson had previously been refused a license by a state regulator of service contracts; and (e) the Director decided that it would not be in the interest of the public to grant Presson a motor vehicle extended service contract producer license.

Conclusions of Law

We have jurisdiction under § 621.045.⁷ The Director argues that there is cause to deny Presson’s application under § 385.209.1.⁸ That statute states, in relevant part:

The director may ... refuse to issue ... a registration or license under sections 385.200 to 385.220 for any of the following causes, if the applicant ... has:

* * *

⁷ RSMo Supp. 2012.

⁸ *Id.*

(5) Been convicted of any felony;

* * *

(9) Been refused a license or had a license revoked or suspended by a state or federal regulator of service contracts, financial services, investments, credit, insurance, banking, or finance[.]

Presson's Felony Convictions

The Director argues that he properly denied Presson's application under § 385.209.1(5) because Presson was convicted of five felonies. The Director has presented certified court records proving that Presson pled guilty to, and was convicted of, five felonies: the 2001 and 2004 convictions for DWI, both Class D felonies; the 2005 conviction for passing bad checks, a Class D felony; and the 2013 convictions for DWI (chronic offender), both Class B felonies.

A criminal conviction occurs when a judgment has been pronounced upon a verdict.⁹ Here, the trial courts sentenced Presson for each of his felonies. The imposition of sentence creates a final judgment and thus a conviction. A suspended execution of sentence, as in the passing bad checks case, is a conviction.¹⁰ We conclude that Presson was convicted of these felonies, and these five convictions constitute cause to deny him a license.

Presson's application for a license was refused by a state regulator of service contracts.

The Director, a state regulator of service contracts,¹¹ asserts that he had grounds to deny Presson's application under § 385.209.1(9) because he had previously refused to issue Presson a license. The Director has presented a certified copy of his order of September 17, 2012 refusing

⁹ *Yale v. City of Independence*, 846 S.W.2d 193, 194 (Mo. 1993).

¹⁰ "When a court suspends the execution of sentence, only the act of executing the sentence has been suspended; a criminal conviction has been entered and the sentence has been assessed." *Edwards v. State*, 215 S.W.3d 292, 295 (Mo. App. S.D. 2007), quoting *Taylor v. State*, 25 S.W.3d 632, 633 (Mo. App. E.D. 2000).

¹¹ See, for example, § 374.045.2 RSMo 2012 Supp., titled in part "Director authorized to make rules and regulations," which provides: "The director may from time to time withdraw or amend any rule or regulation in this chapter, chapter 354, chapters 375 to 385, or as otherwise authorized by law."

Presson's 2011 application for a motor vehicle extended service contract producer license, which proves his assertion.

Presson's Arguments

Presson's complaint asserts first that the Director's application form "articulated that [DWI convictions] need not be listed."¹² He refers to the instructions included in the form, but he misreads them. The instructions state only that "You may exclude misdemeanor traffic citations or convictions involving...driving while intoxicated...." Presson apparently interprets this language as allowing the exclusion of *any* conviction involving driving while intoxicated. We agree that the language of the form is unclear. However, Presson's proposed interpretation violates the express language of § 385.209.1(5), which gives the Director the power to refuse to issue a license to an applicant who has been convicted of *any* felony." (Emphasis added.) Even if the Director had intended to exclude all DWIs from the reporting requirement in his form, it would not be valid because, in the event of a conflict or inconsistency between a statute and a regulation, the statute must prevail.¹³ We apply that rule to forms promulgated by the Director as well.

Presson also asserts that denying him a license is not in the public interest, claiming that the Director "bombarded him with a wide array of documents and request (sic) for information giving Applicant a belief that the documents were for processing the single application filed¹⁴ but now, the Department is using its own errors, omissions and oversights to preclude Applicant from partaking in the main means of employment he has done for the majority of his working

¹² Complaint p. 5.

¹³ See *Parmley v. Missouri Dental Bd.*, 719 S.W.2d 745, 755 (Mo. banc 1986) (in event of conflict or inconsistency between statute and regulation, statute must necessarily prevail).

¹⁴ Presson makes what we consider to be a subsidiary argument that he only applied for a license once, not twice. The record as submitted by the Director proves that he completed and filed two discrete applications. The fact that he sent the second application (and the applicable filing fee) to this Commission instead of to the Department does not change that fact.

life.”¹⁵ Presson misunderstands the nature of professional licensing. The primary purpose of professional licensing is to protect the public.¹⁶ Also, a professional license is a privilege granted by the State.¹⁷ The legislature has enacted § 385.209 to set out certain acts by a prospective licensee that would disqualify the applicant from receiving a license. In Presson’s prior case, the Director asserted, and we agreed, that he was disqualified from licensure because he made a material misrepresentation on his application and had been convicted of three felonies. Therefore, by the express terms of the statute, Presson was properly refused a license in the prior case, and may be refused a license in this one.

Presson finally asserts several constitutional issues, in which he asserts that he was denied due process and access to the courts through alleged failures in service,¹⁸ and that the failure to construe the applicable statute liberally in his favor deprived him and all other similarly situated applicants their due process and equal protection rights.¹⁹ This Commission does not have authority to decide constitutional issues.²⁰ The issue has been raised and may be argued before the courts if necessary.²¹

Discretion

Under § 385.209.2, “the director shall retain discretion in refusing a license or renewal and such discretion shall not transfer to the administrative hearing commission.” We therefore have no discretion to decide whether Presson should receive a license. Our determination that

¹⁵ Complaint pp. 6-7.

¹⁶ *Lane v. State Comm. of Psychologists*, 954 S.W.2d 23, 25 (Mo. App., E.D. 1997).

¹⁷ *Garozzo v. Missouri Dep’t of Ins., Fin. Insts. & Prof’l Regis’n*, 389 S.W.3d 660, 665 (Mo. banc 2013).

¹⁸ Complaint p. 16.

¹⁹ Id. p. 20.

²⁰ *Sprint Communications Co., L.P. v. Director of Revenue*, 64 S.W.3d 832, 834 (Mo. banc 2002); *Cocktail Fortune, Inc. v. Supervisor of Liquor Control*, 994 S.W.2d 955, 957 (Mo. banc 1999); *Williams Cos. v. Director of Revenue*, 799 S.W.2d 602, 604 (Mo. banc 1990); *Fayne v. Dept. of Soc. Serv’s*, 802 S.W.2d 565 (Mo. App., W.D. 1991).

²¹ *Tadrus v. Missouri Bd. of Pharmacy*, 849 S.W.2d 222 (Mo. App., W.D. 1993).

there is cause to deny Presson a license ends our role in this case, unless the Director intends to pursue the remaining cause for denial alleged in the complaint.

Summary

We find cause to deny Presson's application under § 385.209.1(5) and (9). The Director shall inform us by November 6, 2013, whether he intends to pursue the other cause for denial (pursuant to § 385.209.1(3)) alleged in the complaint.

SO ORDERED on October 30, 2013.

/s/ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner